

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

JEREME ESCOBEDO §
v. § CIVIL ACTION NO. 5:04cv224
CHEQUITA CLEMENTS, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND GRANTING PARTIAL MOTION TO DISMISS

The Plaintiff Jereme Escobedo, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On December 29, 2004, the Texas Department of Criminal Justice filed a motion to dismiss under Rule 12(b)(1) and 12(b)(4), Fed. R. Civ. P., based upon sovereign immunity and failure to state a claim against the Department upon which relief could be granted. On August 19, 2005, the Magistrate Judge issued a Report recommending that this motion be granted and that the Department be dismissed as a party to this lawsuit. The Plaintiff received a copy of this Report on or before August 26, 2005, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge and has determined that this Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the motion to dismiss filed by the Defendant Texas Department of Criminal Justice on December 29, 2004 (docket no. 10) is hereby GRANTED and the Defendant Texas Department of Criminal Justice is hereby DISMISSED as a party to this lawsuit. The dismissal of this party shall have no effect upon the remainder of the claims and parties in this lawsuit.

SIGNED this 12th day of September, 2005.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE